

EXHIBIT 1

please set up the telecon for 10: 00 am eastern standard time, Tuesday March 5.

From: Frear Stephen Schmid (frearschmid@aol.com)

To: jblumenfeld@morrisnichols.com; dfahnestock@morrisnichols.com; sckline@venable.com; mchou@venable.com

Cc: sreed@venable.com; dhkaltman@venable.com; glenn.brown@realworldlaw.com; tfreiburger1@yahoo.com

Date: Saturday, March 2, 2024 at 04:30 PM PST

Hi Monica- although it still not clear the purpose of your proposed meeting given its lack of compliance with the scheduling order and Judge Williams' referring order, without prejudice to defendant, please set up the telecon for 10: 00 am eastern standard time, Tuesday March 5. Please also provide page references to depo of Denning

Very truly yours,

Frear Stephen Schmid
7585 Valley Ford Road
Petaluma, CA 94952
Tel: 415-788-5957
e-mail: frearschmid@aol.com

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On Friday, March 1, 2024 at 06:27:49 PM PST, Chou, Monica <mchou@venable.com> wrote:

Stephen,

We are concerned with your unwillingness to provide dates for a meet and confer. We intend to approach Judge Burke and ask him to strike SBH's defenses, given the clear deficiencies in its invalidity contentions and SBH's failure to provide any expert disclosures on those issues despite Judge Burke's clear directive to adhere to the schedule and the rebuttal reports' upcoming deadline on April 5th. In addition, we intend to request Judge Burke to strike the Rule 26(a)(2)(C) disclosure because it fails to set forth sufficient "summary of the facts and opinions" on which Mr. Denning will testify, particularly in view of Mr. Denning's deposition testimony. See, e.g., *Emerson Elec. Co. v. Suzhou Cleva Elec. Appliance Co.*, 2015 WL 8770712, at *2-3 (E.D. Mo. 2015). If you continue to be unwilling to provide times for a meet and confer, we will move to strike the defenses and the inadequate disclosure.

Best regards,

Monica Chou, Esq. | Venable LLP
t 212.218.2368 | f 212.307.5598
151 W. 42nd Street, 49th Floor, New York, NY 10036

MChou@Venable.com | www.Venable.com

From: Frear Stephen Schmid <frearschmid@aol.com>
Sent: Thursday, February 29, 2024 11:22 AM
To: Jack Blumenfeld <jblumenfeld@morrisnichols.com>; Derek Fahnestock <dfahnestock@morrisnichols.com>; Kline, Steven C. <SCKline@Venable.com>; Chou, Monica <MChou@Venable.com>
Cc: Reed, Scott K. <SReed@Venable.com>; Kaltman, Daniel H. <DHKaltman@Venable.com>; glenn brown <glenn.brown@realworldlaw.com>; Thomas Freiburger <tfreiburger1@yahoo.com>
Subject: Re: SBH's DISCLOSURE/OPINION OF UNRETAINED EXPERT WITNESS ZAC DENNING Rule 26(a)(2) (C)

Caution: External Email

Hi Monica-you have failed to provide a single substantive reason for the proposed meeting. SBH needs to know and is entitled to know why plaintiffs contend a meeting is necessary. Apparently, it is meant to be in anticipation of some undisclosed motion. It seems to me that you are talking about a Daubert motion and/or a dispositive motion which would be entirely premature. In any event unless we understand the factual and legal bases for your desired meeting, we cannot agree to such because cannot meaningfully prepare for it. Give us the talking points and facts and legal bases so that we can come to the meeting on equal footing with plaintiffs.

Thanks.

Very truly yours,

Frear Stephen Schmid
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On Wednesday, February 28, 2024 at 03:04:59 PM PST, Chou, Monica <mchou@venable.com> wrote:

Dear Stephen,

Given the clear deficiencies in SBH's invalidity contentions (see, e.g., attached correspondences from Steven Kline dated November 22, 2023 and December 14, 2023) and its Rule 26(a)(2)(C) disclosure (see, e.g., *Emerson Elec. Co. v. Suzhou Cleve Elec. Appliance Co.*, 2015 WL 8770712, at *2-3 (E.D. Mo. 2015)), the undeniable burden of proof SBH bears on all invalidity defenses, Judge Burke's order denying SBH's request for an extension of time including for expert reports (D.I. 109), and the rebuttal reports' upcoming deadline on April 5th, please immediately provide your and your Delaware counsel's availability for a meet and confer on March 4th.

Best regards,

Monica Chou, Esq. | Venable LLP
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MChou@Venable.com | www.Venable.com

From: Frear Stephen Schmid <frearschmid@aol.com>
Sent: Wednesday, February 28, 2024 1:46 PM
To: Jack Blumenfeld <jblumenfeld@morrisnichols.com>; Derek Fahnestock <dfahnestock@morrisnichols.com>; Kline, Steven C. <SCKline@Venable.com>; Chou, Monica <MChou@Venable.com>
Cc: Reed, Scott K. <SReed@Venable.com>; Kaltman, Daniel H. <DHKaltman@Venable.com>
Subject: Re: SBH's DISCLOSURE/OPINION OF UNRETAINED EXPERT WITNESS ZAC DENNING Rule 26(a)(2)(C)

Caution: External Email

Hi Monica,

SBH strongly disagrees with plaintiffs' contentions/positions. Your conclusionary statements are not helpful to addressing the unfounded sweeping assertions. Without substantive guidance as

to legal or factual basis for the assertions, we cannot at this time prepare for a meaningful discussion.

In any event, I am not available until Monday March 4 at the earliest. Also, I presume you expect Glenn to partake, but have not cc'd him, so I need to confirm his availability.

Thanks.

Very truly yours,

Frear Stephen Schmid

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On Wednesday, February 28, 2024 at 08:27:57 AM PST, Chou, Monica <mchou@venable.com> wrote:

Counsel,

We have not received a response on the below email yet. Please immediately provide your availability for a meet and confer this week, or alternatively, confirm that SBH unequivocally agrees with points 1 and 2 in the below email.

Best regards,

Monica Chou, Esq. | Venable LLP
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151 W. 42nd Street, 49th Floor, New York, NY 10036

MChou@Venable.com | www.Venable.com

From: Chou, Monica

Sent: Friday, February 23, 2024 3:12 PM

To: Frear Stephen Schmid <frearschmid@aol.com>; Jack Blumenfeld <jblumenfeld@morrisnichols.com>; Derek Fahnestock <dfahnestock@morrisnichols.com>; Kline, Steven C. <SCKline@Venable.com>

Cc: Scott K. Reed (SReed@Venable.com) <SReed@Venable.com>; Kaltman, Daniel H. <DHKaltman@Venable.com>

Subject: RE: SBH's DISCLOSURE/OPINION OF UNRETAINED EXPERT WITNESS ZAC DENNING Rule 26(a)(2)(C)

Counsel,

In light of Magistrate Judge Burke's rejection of SBH's request for an extension of time including to serve all affirmative expert reports, the clear deficiencies in SBH's invalidity contentions and the undeniable fact that SBH bears the burden of proof (by clear and convincing evidence) on all invalidity allegations, we were surprised that the only expert disclosure of SBH was a Rule 26(a)(2)(C) Disclosure/Opinion of Unretained Expert Witness Zac Denning.

In any event,

1. Mr. Denning's disclosure is clearly inappropriate and inadequate under Rule 26(a)(2)(C) in view of Mr. Denning's deposition testimony and because it does not provide a sufficient summary of facts and opinions as required under Rule 26(a)(2)(C). Please immediately withdraw that disclosure.

2. In addition, please immediately confirm that SBH is withdrawing all other invalidity defenses (other than those set forth in Mr. Denning's disclosure - which is limited to enablement) and that SBH will not attempt to offer expert testimony on any other invalidity defense at any point in this litigation.

If SBH refuses to do so, please provide your availability for a meet and confer early next week so that the parties can proceed to trial under the current schedule as directed by Magistrate Judge Burke.

Best regards,

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From: Frear Stephen Schmid <frearschmid@aol.com>
Sent: Tuesday, February 20, 2024 7:41 PM
To: Jack Blumenfeld <jblumenfeld@morrisnichols.com>; Derek Fahnestock <dfahnestock@morrisnichols.com>;
Kline, Steven C. <SCKline@Venable.com>; Chou, Monica <MChou@Venable.com>
Subject: SBH's DISCLOSURE/OPINION OF UNRETAINED EXPERT WITNESS ZAC DENNING Rule 26(a)(2)(C)

Caution: External Email

Dear Counsel please see attached served hereby.

Very truly yours,

Frear Stephen Schmid
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Petaluma, CA 94952
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e-mail: frearschmid@aol.com

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